

# HOUSE BILL REPORT

## E2SHB 2259

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### As Passed House:

March 14, 2005

**Title:** An act relating to water-sewer districts.

**Brief Description:** Requiring a vote of the people in specified circumstances before a city may assume jurisdiction over a water-sewer district.

**Sponsors:** By House Committee on Finance (originally sponsored by Representatives Takko, Simpson, Schindler and Blake).

### Brief History:

#### Committee Activity:

Local Government: 3/1/05 [DPS];

Finance: 3/4/05, 3/7/05 [DP2S(w/o subLG)].

#### Floor Activity:

Passed House: 3/14/05, 92-5.

### Brief Summary of Engrossed Second Substitute Bill

- Prohibits a city from assuming jurisdiction over all or part of a water-sewer district serving a population greater than 1,000 residents and containing, within its boundaries, the territory of two or more cities, or one city and unincorporated territory, unless voters of the entire water-sewer district approve a ballot proposition authorizing the assumption.
- Requires that a feasibility study be completed and made public before a public vote is held regarding an assumption of jurisdiction.
- Denies jurisdiction to a Boundary Review Board to review an attempted or completed assumption that has been subject to a vote by the voters in the water-sewer district and which involves not more than one city.
- Authorizes a city, subject to certain exceptions, to levy and collect a tax on gross revenue derived by a water-sewer district from the sale of water or sewer services within the city.
- Requires a city not currently imposing a utility tax to seek voter approval at a primary or general election before imposing the tax on a water-sewer district operating within the boundaries of the city.

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Simpson, Chair; Clibborn, Vice Chair; Schindler, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; B. Sullivan, Takko and Woods.

**Staff:** CeCe Clynch (786-7168).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill by Committee on Finance be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives McIntire, Chair; Hunter, Vice Chair; Conway, Hasegawa and Santos.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Ahern and Ericksen.

**Staff:** Mark Matteson (786-7145).

### **Background:**

Current law sets forth legislative and electoral mechanisms, based upon geographic location and property valuation, for the assumption of jurisdiction of water-sewer districts (districts) by cities or towns.

Whenever all of the territory of a district is located within the corporate boundaries of a city, the city legislative body may adopt a resolution or ordinance to assume jurisdiction over the entire district.

Whenever a portion of a district equal to at least 60 percent of its area, or 60 percent of the assessed valuation of the real property lying within the district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city. Related statutes specify that under certain circumstances the district may, upon a favorable vote of a majority of all voters within the district, require a city to assume responsibility for the operation and maintenance of the district's property, facilities, and equipment throughout the entire district.

Whenever the portion of a district included within the corporate boundaries of a city is less than 60 percent of the area of the district and less than 60 percent of the assessed valuation of the real property within the district, the city may assume, by ordinance, jurisdiction of the district's responsibilities, property, facilities, and equipment within the corporate limits of the city. The city may also assume responsibility for the operation and maintenance of the district's property, facilities, and equipment throughout the entire district upon a favorable vote of a majority of all voters within the district.

Whenever more than one city, in whole or in part, is included within a district, the city which has within its boundaries 60 percent or more of the area of the assessed valuation of the district may, with the approval of any other city containing part of such district, assume responsibility for operation and maintenance of the district's property, facilities and equipment within such other city.

Cities are granted the power to license business activities and to charge amounts for such licenses. The state court has interpreted this provision broadly, to mean that cities have the authority to not only impose fees and taxes for the purposes of regulation but for the purposes of raising revenue, as well. Cities have used this authority to impose license fees and taxes upon businesses and utilities since statehood. Cities' taxes upon utilities are based on gross receipts. Cities may tax electric, gas, steam, and telephone businesses at rates up to six percent without voter approval, and water, sewer, solid waste, and stormwater utilities, with no rate restrictions.

A city may tax a city's own municipal utility or a privately operated utility that conducts services within the city. In general, however, a city may not tax a utility operated by another municipal corporation within the city limits. In a 1984 ruling, the Washington Supreme Court found that express statutory authority was necessary for the application of a city's tax to the services of another municipal corporation. One such authority allows cities to tax income derived specifically by public utility districts that sell electricity within the limits of cities.

#### **Summary of Engrossed Second Substitute Bill:**

##### Voter approval of the assumption of jurisdiction of a water-sewer district by a city.

A city may not assume the jurisdiction over a water-sewer district serving a population greater than 1,000 residents and containing, within its boundaries, the territory of two or more cities, or one city and unincorporated territory, unless voters of the entire water-sewer district approve a ballot proposition authorizing the assumption. The cost of the election must be borne by the city seeking to assume such jurisdiction. The approval of the voters in a water-sewer district is not required if the board of commissioners of the water-sewer district consents to the assumption of jurisdiction by the city or town.

##### Feasibility study requirement.

A feasibility study is required regarding a proposed assumption of jurisdiction prior to the matter being subject to a decision by the voters in the water-sewer district. This feasibility study must comply with specified criteria and procedural conditions, including:

- the study must be done by a qualified expert with expertise involving public water and sewer systems;
- it must address specified issues relating to functional and operational impacts, financial consequences, water rights, etc.;
- it must be completed within six months of the passage of the resolution proposing the assumption;
- the findings of the study must be made available to the voters as a public record; and
- the vote on assumption cannot take place until the study is completed and the results made public.

A feasibility study is not necessary if the board of commissioners of the water-sewer district consents to the assumption of jurisdiction by the city or town.

Limitations on the jurisdiction of Boundary Review Boards.

A Boundary Review Board is denied jurisdiction to review an attempted or completed assumption that has been subject to a vote by the voters in the water-sewer district and which involves not more than one city.

Applicability of the act.

The provisions of the act are applicable to assumptions of jurisdiction that are pending as of the effective date of the act, or which are initiated on or after such date.

Taxing authority.

A city in which a water-sewer district operates is authorized to levy and collect from the district a tax on that portion of the district's gross revenues which are derived from the sale of water or sewer services within the city. The district, in turn, is authorized to add the amount of tax to the rates or charges it makes for water or sewer services sold within the limits of the city.

Certain limitations are put upon the city's taxing authority:

- the tax may not extend to revenues derived from the sale of water or sewer services for purposes of resale;
- the rate of tax may not exceed 6 percent;
- the tax may not be imposed if the city is imposing any tax, fee, or charge on the district pursuant to an interlocal agreement; and
- if the city is not currently imposing such a tax, it must first seek voter approval at a primary or general election.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately

**Testimony For:** (Local Government) (In support) This bill is offered as a compromise to two longstanding issues concerning assumption and taxation. While it is not perfect, it presents a workable solution. The limitations placed upon the cities' authority to tax are appropriate. By allowing cities to impose a tax, this bill helps cities when they need it.

(With concerns) The cap placed upon the rate of tax is concerning. Currently, 146 cities impose a tax on water-sewer service and the weighted average of those taxes is 7 percent which is above the 6 percent cap imposed in this bill. The revenue from a utility tax goes into the general fund and pays for many city services. It is not right that city citizens receiving water-sewer from a city owned water-sewer system may pay a tax of more than 6 percent while citizens in the same city receiving service from a water-sewer service which is not city owned enjoy exactly the same benefits but pay a tax no higher than 6 percent.

**Testimony For:** (Finance) The water-sewer districts support this bill. We believe that this represents a compromise solution for the most part. The elements solve an eight year problem that has been ongoing.

We are concerned about the assumption piece. Cities are asking for equal treatment. They should be allowed to impose tax. We are concerned about a cap on the tax rate, but understand this is an attempt to compromise.

**Testimony Against:** (Local Government) None.

**Testimony Against:** (Finance) None.

**Persons Testifying:** (Local Government) (In support) Joe Daniels, Washington State Association of Water and Sewer Districts.

(With concerns) Jim Justin, Association of Washington Cities.

**Persons Testifying:** (Finance) Steve Lindstrom, Sno-King; Jim Justin, Association of Washington Cities; and Joe Daniels, Washington Association of Sewer and Water Districts.

**Persons Signed In To Testify But Not Testifying:** (Local Government) None.

**Persons Signed In To Testify But Not Testifying:** (Finance) None.